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Amendment No. 4 to SB2135

**Haun
Signature of Sponsor**

AMEND Senate Bill No. 2135*

House Bill No. 2351

By deleting Section 1 in its entirety and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 43-26-103, is amended by deleting the section in its entirety and by substituting instead the following:

Section 43-26-103.

(a) It is a rebuttable presumption that a farm or farm operation, except a new type of farming operation as described in subsection (b), is not a public or private nuisance. The presumption created by this subsection may be overcome only if the person claiming a public or private nuisance establishes by preponderance of the evidence that either:

(1) the farm operation, based on expert testimony, does not conform to generally accepted agricultural practices; or,

(2) the farm or farm operation alleged to cause the nuisance does not comply with any applicable statute or regulation, including without limitation statutes and regulations administered by the department of agriculture or the department of environment and conservation.

(b) With regard to the initiation of a new type of farming operation, there is a rebuttable presumption that such new type of farm operation is not a public or private nuisance, if the new type of farming operation exists for one (1) year or more before an action for nuisance is initiated from the property of the person alleging a nuisance. The presumption

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created by this subsection may be overcome only if the person claiming a public or private nuisance establishes by a preponderance of the evidence that either:

(1) the new type of farm operation, based on expert testimony, does not conform to generally accepted agricultural practices; or,

(2) the new type of farm operation alleged to cause the nuisance does not comply with any applicable statute or regulation, including without limitation statutes and regulations administered by the department of agriculture or the department of environment and conservation.

(c) As used in this section, "new type of farming operation" means a farm operation that is materially different in character and nature from previous farming operations and that is initiated subsequent to the date that the person alleging nuisance became the owner or lessee of the land, the use or enjoyment of which is alleged to be affected by the farming operation; "new type of farming operation" does not include expansion of facilities for a type of farming operation that existed prior to the date that the person alleging nuisance became the owner or lessee of the land, the use or enjoyment of which is alleged to be affected by the farming operation.